

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

VIRGINIA BARONIAN,

Debtor.

Case No. 05-28882-C-7

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION TO AVOID LIEN**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(K).

Findings of Fact

On January 23, 2006, debtor filed a motion requesting that this court avoid a judgment lien in the amount of \$10,835.87 in favor of FCC National Bank Assignee of 1st National Bank of Chicago Issuer of First Card. Debtor did not include with her motion a copy of the lienholder's recorded abstract of judgment. A hearing was scheduled for February 28, 2006, to

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1 consider the motion. Upon review of the record, the court
2 determined that the written record was adequate and that no
3 oral argument was necessary.

4 The debtor scheduled the property at a value of
5 \$100,000.00. A lien in the amount of \$5,504.31 in favor of
6 Arlo Miller is listed in debtor's Schedule D. The debtor's
7 motion claims that the judgment lien impairs debtor's homestead
8 exemption. However, debtor's Schedule C fails to list the
9 property as exempt.

10 The court notes that debtor did not include a Docket
11 Control Number on all pleadings. Debtor also did not file a
12 separate notice of hearing advising potential respondents
13 whether and when written opposition must be filed, the deadline
14 for filing and serving it, and the names and addresses of the
15 persons who must be served with any opposition. Further,
16 debtor did not file her proof of service concurrently with her
17 pleadings, or, alternatively, within three days after filing
18 her pleadings.

19 In reviewing debtor's proof of service, the court notes
20 that it appears debtor served the motion on the attorney who
21 recorded the abstract.

22 Conclusions of Law

23 A debtor may avoid the fixing of a lien on an interest
24 of the debtor in property to the extent that the lien impairs
25 an exemption that is properly claimed and to which there is no
26 objection. 11 U.S.C. § 522(f)(1).
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1 Since debtor did not claim the subject property as
2 exempt in her schedules, the lien does not impair any
3 exemption. Consequently, the debtor may not avoid the lien.

4 Additionally, the motion must comply with local rule
5 9014-1. Local rule 9014-1(c)(1) requires the following:

6 In motions filed in the bankruptcy
7 case, a Docket Control Number
(designated as DC No.) shall be
8 included by all parties immediately
9 below the case number on all
10 pleadings and other documents,
including proofs of service, filed
in support of or opposition to
motions.

11 Debtor's moving papers did not include a Docket Control
12 Number as required by local rule 9014-1(c)(1).

13 Local rule 9014-1(d)(2) requires the following:

14 Every motion shall be accompanied by
15 a separate notice of hearing stating
the docket control number, the date
16 and time of the hearing, the
location of the courthouse, the name
17 of the judge hearing the motion, and
the courtroom in which the hearing
will be held.

18 Debtor did not file a separate notice of hearing as
19 required by local rule 9014-1(d)(2).

20 Local rule 9014-1(d)(3) requires the following:

21 The notice of hearing shall advise
22 potential respondents whether and
when written opposition must be
23 filed, the deadline for filing and
serving it, and the names and
24 addresses of the persons who must be
served with any opposition. If
25 written opposition is required, the
notice of hearing shall advise
26 potential respondents that the
failure to file timely written
27 opposition may result in the motion
28 being resolved without oral argument

1 and the striking of untimely written
2 opposition.

3 Debtor did not advise potential respondents as required
4 by local rule 9014-1(d)(3).

5 Local rule 9014-1(e)(2) requires the following:

6 A proof of service, in the form of a
7 certificate of service, shall be
8 filed with the Clerk concurrently
with the pleadings or documents
served, or not more than three (3)
calendar days after they are filed.

9 Debtor filed her motion on January 23, 2006. Debtor did
10 not file her proof of service until February 3, 2006. Thus,
11 debtor did not meet the deadlines for filing a separate proof
12 of service as required by local rule 9014-1(e)(2).

13 Therefore, debtor's motion will also be denied without
14 prejudice for failure to comply with the local rules.

15 Further, Federal Rule of Bankruptcy Procedure 9014(b)
16 requires that a motion initiating a contested matter "shall be
17 served in the manner provided for service of a summons and
18 complaint by Rule 7004." Fed. R. Bankr. P. 9014(b).

19 Federal Rule of Bankruptcy Procedure 7004(b)(3) provides
20 in pertinent part:

21 Except as provided in
22 subdivision(h), in addition-to the
23 methods of service authorized by
24 Rule 4(e)-(j) F.R.Civ.P., service
25 may be made within the United States
26 by first class postage prepaid as
27 follows... Upon a domestic or
28 foreign corporation or upon a
partnership or other unincorporated
association, by mailing a copy of
the summons and complaint to the
attention of an officer, a managing
or general agent, or to any other
agent authorized by appointment or

1 by law to receive service of process
2 and, if the agent is one authorized
3 by statute to receive service and
the statute so requires, by also
mailing a copy of the defendant.

4 Fed. R. Bank. P. 7004(b)(3).

5 Here, debtor's service of the motion does not comply
6 with the requirement to serve the motion to the attention of an
7 officer or other agent authorized as provided in Rule
8 7004(b)(3). Beneficial California, Inc. v. Villar (In re
9 Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004).

10 The court notes that a corporation's agent for service
11 of process may be identified by visiting the California
12 Secretary of State's website at www.ss.ca.gov. The website
13 contains a link to the "California Business Portal" which
14 provides an online service titled "California Business Search."
15 Therein, corporate information, including the agent for service
16 of process, may be obtained by entering the corporation's name
17 in the search engine.

18 Accordingly, the motion is denied without prejudice.

19 An appropriate order will issue.

20 Dated: March 3, 2006

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23 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

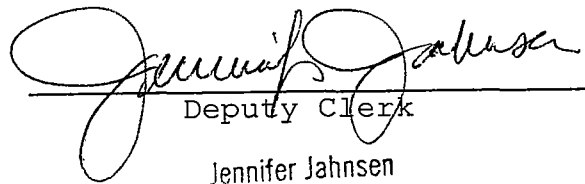
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Dated: 3-6-06


Deputy Clerk
Jennifer Jahnsen